

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ALVIN L. HEGGE,

Petitioner,

v.

JASON BENNETT,

Respondent.

CASE NO. C23-6058 BHS

ORDER

THIS MATTER is before the Court on Magistrate Judge Brian A. Tsuchida's Report and Recommendation (R&R), Dkt. 5, recommending the Court deny pro se petitioner Alvin Hegge's 28 U.S.C. §§ 2241 and 2254 habeas petition, Dkt. 1, dismiss the case with prejudice as time-barred and successive, and deny Hegge a certificate of appealability. Hegge's petition also asserts claims under 42 U.S.C. § 1983, based on his treatment in prison. Dkt. 1.

The Court granted in part Hegge's motion for an extension of time to object to the R&R, giving him 45 days to file, rather than the 14 days provided under Federal Rule of Civil Procedure 72(a). Dkts. 6, 7. Hegge instead filed a notice of voluntary dismissal under Rule 41(a)(1)(A)(i). Dkt. 8. Hegge asserts that this notice operates to dismiss this case without prejudice, leaving him free "to prepare a comprehensive memorandum of

1 authority in support of refiling his underlying Petition for Writ of Habeas Corpus.” *Id.* at
2 5.

3 A plaintiff may voluntarily dismiss an action by filing “a notice of dismissal
4 before the opposing party serves either an answer or a motion for summary judgment.”
5 Fed. R. Civ. P. 41(a)(1)(A)(i). The respondent in this case has not answered or filed a
6 motion for summary judgment (and in a habeas case, would not file such a motion). The
7 R&R concludes that Hegge’s petition is time-barred, successive, and filed in the wrong
8 district. The Court agrees, but it also agrees that Hegge’s notice requires the Court to
9 dismiss the case without prejudice. *See* Rule 41(a)(1)(A)(i).

10 The case is **DISMISSED without prejudice**. The Court **DECLINES** to adopt the
11 R&R because it is moot.

12 The Clerk shall enter a **JUDGMENT** and close the case.

13 **IT IS SO ORDERED.**

14 Dated this 13th day of February, 2024.

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18 BENJAMIN H. SETTLE
19 United States District Judge
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